

Message

From: Briskin, Jeanne [Briskin.Jeanne@epa.gov]
Sent: 12/20/2018 8:16:12 PM
To: Clarke, Victoria [clarke.victoria@epa.gov]
Subject: RE: OGE-278 Conflicts of Interest Note to Filer

Thanks Victoria. I've reviewed the memo you provided and have no questions at the moment.

Jeanne

From: Clarke, Victoria
Sent: Thursday, December 20, 2018 3:12 PM
To: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Subject: OGE-278 Conflicts of Interest Note to Filer

Hi Jeanne!

I reviewed and certified your OGE-278. I just have a quick Conflicts of Interest Note for you, which is attached. No need to be alarmed – you've received one of these previously, and I think you're familiar with the assets we've noted for you. While not all of these assets may be directly influenced by your work now, I've just flagged them for you out of an abundance of caution in the event company directions change. 😊

Happy holidays!

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

Message

From: Briskin, Jeanne [Briskin.Jeanne@epa.gov]
Sent: 12/20/2018 8:25:18 PM
To: Clarke, Victoria [clarke.victoria@epa.gov]
Subject: RE: OGE-278 Conflicts of Interest Note to Filer

OK, thanks. That's a helpful clarification.

From: Clarke, Victoria
Sent: Thursday, December 20, 2018 3:25 PM
To: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Subject: RE: OGE-278 Conflicts of Interest Note to Filer

We most certainly can. Those are merely some examples of sectors – some of the companies that you have stock in may even straddle multiple sectors. The * is merely to denote that, due to how much you have, you're in the "matters of general applicability" territory.

Victoria Clarke
Attorney-Advisor
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Washington, D.C. | 7348 WJCN
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EPA Cell: 202-336-9101

From: Briskin, Jeanne
Sent: Thursday, December 20, 2018 3:22 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: OGE-278 Conflicts of Interest Note to Filer

Looking more closely, we should chat briefly about what sectors are of concern. Some of the holdings marked with * are not in any of the sectors you named. I would like to be clear about the sectors of concern. Can we chat after the holidays?

There is no immediate issue that drives my question, as I have never had any matters of specific parties or general applicability occur while I have been in OGC, and do not expect any to arise. But you may have heard that I am being reassigned, so its important for me to know about these issues for any future job I hold.

Thanks,
Jeanne

From: Clarke, Victoria
Sent: Thursday, December 20, 2018 3:12 PM
To: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Subject: OGE-278 Conflicts of Interest Note to Filer

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I reviewed and certified your OGE-278. I just have a quick Conflicts of Interest Note for you, which is attached. No need to be alarmed – you've received one of these previously, and I think you're familiar with the

assets we've noted for you. While not all of these assets may be directly influenced by your work now, I've just flagged them for you out of an abundance of caution in the event company directions change. 😊

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Message

From: Clarke, Victoria [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CLARKE, VICTORIA]
Sent: 12/20/2018 8:11:55 PM
To: Briskin, Jeanne [Briskin.Jeanne@epa.gov]
Subject: OGE-278 Conflicts of Interest Note to Filer
Attachments: Briskin, Jeanne - 2018 Cautionary Note.docx

Hi Jeanne!

I reviewed and certified your OGE-278. I just have a quick Conflicts of Interest Note for you, which is attached. No need to be alarmed – you’ve received one of these previously, and I think you’re familiar with the assets we’ve noted for you. While not all of these assets may be directly influenced by your work now, I’ve just flagged them for you out of an abundance of caution in the event company directions change. 😊

Happy holidays!

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Victoria Clarke
Attorney-Advisor
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Washington, D.C. | 7348 WJCN
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EPA Cell: 202-336-9101

Dear Jeanne,

In reviewing your OGE-278 (Public Financial Disclosure Report) in INTEGRITY, we noticed that you reported owning certain interests that might be affected by the performance of your official duties. These assets appear to be over the regulatory thresholds, so we are sending you this cautionary letter to remind you to take appropriate steps to ensure that you do not have a conflict of interest. We are not concluding that you currently have a conflict of interest; rather, you should read the information below and contact an ethics official if you have any questions. Remember, it is your obligation to ensure that your private interests (including your assets) do not conflict with your public duties. Be vigilant!

Why Do We Raise Concerns?

A criminal statute, 18 U.S.C. §208(a), bars you from participating in any “particular matter” that affects any of your own interests or any imputed interest (e.g., spouse or dependent children). Your interests include not only ownership interests (e.g., stock, bonds, mutual funds) but also the interests of outside entities (e.g., any organization in which you are serving as an officer, director, or trustee) and prospective employers (any entity with which you are seeking future employment). So you can’t participate in any particular matter that will have a direct and predictable effect on your financial interest.

The important point to remember here is that 18 U.S.C. §208(a) is a criminal statute. A knowing violation of this statute can result in criminal prosecution and penalties. It’s important to understand the elements of the financial conflict of interest statute. You have to participate “personally and substantially” in a “particular matter” in order for there to be a conflict of interest, and there has to be a “direct and predictable” effect on your financial interests.

What is a particular matter?

A “particular matter” involves any deliberation, decision or action and that is focused on the interests of specific persons/organizations or any identifiable class of persons. It includes “specific party” matters (e.g., contracts, grants, assistance agreements, lawsuits, enforcement action, permits, licenses, audits) and matters of “general applicability” (e.g., rulemaking or policy matters) that distinctively affect a particular industry or identifiable class of persons.

What is “personal and substantial” participation?

Personal participation means that you were personally involved in the matter or that you directed or controlled a subordinate’s participation. *Substantial participation* means that your involvement in the matter was of significance, which includes decision-making, review or recommendation as to an action being taken, signing or approving a final document, and/or participating in a final decision briefing.

What is a “direct and predictable” effect on a financial interest?

The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.

YOUR FINANCIAL INTEREST(S) OF CONCERN

We identified the following financial interest(s) that may be affected by the performance of your official duties and that exceed the regulatory exemption levels. Please note that this isn't just about the individual companies, you also exceed regulatory thresholds for matters of general applicability in several sectors (*energy production, utilities, pharmaceuticals, etc.). This does not necessarily mean that you have a current conflict of interest, but we want to flag the asset(s) for you.

(b) (6), (b) (3) (A)

Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. You can still participate if you own less than the levels below:

SPECIFIC PARTY MATTER	MATTER OF GENERAL APPLICABILITY
e.g., an enforcement action against ABC Widget Company	e.g., working on a rulemaking that affects all widget manufacturers
≤\$15,000 aggregate in ABC Widget Co.	≤\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.)
≤\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)	≤\$50,000 aggregate in all affected parties (all widget makers)

Don't forget that you have to add together your own ownership interest and any imputed interest. You also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

EXAMPLE: Your father-in-law passed away recently and bequeathed to your spouse shares in an oil and gas company worth \$30,000. You can't work on a specific party matter involving that company and also now can't work on any rulemaking that affects all oil and gas companies.

What to do if you're worried about a conflict

If you are concerned that you have a conflict, contact OGC/Ethics immediately. We will go over the available options for you. Typically, potential conflict of interests are resolved in one of the following ways:

- 1) Don't participate. This means that you do not participate in the matter at all, including attending meetings, receiving briefings or being copied on substantive documents. We recommend that you document your recusal in writing, with a copy to OGC/Ethics.
- 2) Divest entirely or get below the regulatory threshold. You can either sell outright on your own or, if the sale will result in a tax liability for capital gains, then you may instead contact OGC/Ethics for a "Certificate of Divestiture" before you sell. This will enable you to defer capital gains tax, but you have to ask OGC/Ethics for assistance before you divest.
- 3) Ask for a waiver. Only the Agency's Designated Agency Ethics Official (DAEO) in OGC is authorized to waive the prohibition of 18 U.S.C. §208(a) where the interest is "not so substantial as to be deemed likely to affect the integrity of services which the Government may expect." OGC must consult with another federal agency before issuing a waiver, which are rarely granted.

* * * * *

If you need more information or advice, feel free to contact OGC/Ethics at ethics@epa.gov. We will be happy to assist you.

From: [Fugh, Justina](#)
To: [Briskin, Jeanne](#)
Subject: cautionary note
Date: Monday, June 21, 2021 5:52:00 PM

Hi Jeanne,

In reviewing your OGE-278 (Public Financial Disclosure Report) in INTEGRITY, we noticed that you reported owning certain interests that might be affected by the performance of your official duties. Because your assets are over the regulatory thresholds, we are sending you this cautionary letter to remind you to take appropriate steps to ensure that you do not have a conflict of interest. We are not concluding that you currently have a conflict of interest; rather, you should read the information below and contact an ethics official if you have any questions. Remember, it is your obligation to ensure to that your private interests (including your assets) do not conflict with your public duties. Be vigilant!

YOUR FINANCIAL INTEREST(S) OF CONCERN

As part of your official duties, you can't work with any of the companies listed below and, given your ownership levels in them and two sector funds, you also can't work on any matters of general applicability that affect their sectors. For example, you own stock in (b) (6)

Based on your financial conflicts of interest, you cannot work on rulemaking, for example, that is directed at any part of (b) (6)

If your office were to look into the (b) (6)

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ASSET	SECTOR	SUBINDUSTRY	YOUR RECUSAL OBLIGATIONS GIVEN AMOUNT OWNED You cannot work on:
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters. Possibly matters of general applicability for sector, subindustries listed if

			ownership interest is over \$25K.
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters. Possibly matters of general applicability for utilities if ownership interest is over \$25K.
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Matters of general

(b) (6), (b) (3) (A)			applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Matters of general applicability for sector, subindustries listed

Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. You can still participate if you own less than the levels below:

SPECIFIC PARTY MATTER	MATTER OF GENERAL APPLICABILITY
e.g., an enforcement action against ABC Widget Company	e.g., working on a rulemaking that affects all widget manufacturers
≤\$15,000 in ABC Widget Co. or in aggregate for companies in this same sector	≤\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.)
≤\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)	≤\$50,000 aggregate in all affected parties (all widget makers)

Don't forget that you have to add together your own ownership interest and any imputed interest. You also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

EXAMPLE: Your father-in-law passed away recently and bequeathed to your spouse shares in an oil and gas company worth \$30,000. You can't work on a specific party matter involving that company and also now can't work on any rulemaking that affects all oil and gas companies.

Why Do We Raise Concerns?

A criminal statute, 18 U.S.C. §208(a), bars you from participating in any "particular matter" that affects any of your own interests or any imputed interest (e.g., spouse or dependent children). Your interests include not only ownership interests (e.g., stock, bonds, mutual funds) but also the interests of outside entities (e.g., any organization in which you are serving as an officer, director, or trustee) and prospective employers (any entity with which you are seeking future employment). So you can't participate in any particular matter that will have a direct and predictable effect on your financial interest.

The important point to remember here is that 18 U.S.C. §208(a) is a criminal statute. A knowing violation of this statute can result in criminal prosecution and penalties. It's important to understand the elements of the financial conflict of interest statute. You have to participate "personally and substantially" in a "particular matter" in order for there to be a conflict of interest, and there has to be a "direct and predictable" effect on your financial interests.

What is a particular matter?

A "particular matter" involves any deliberation, decision or action and that is focused on the interests of specific persons/organizations or any identifiable class of persons. It includes "specific party" matters (e.g., contracts, grants, assistance agreements, lawsuits, enforcement action, permits, licenses, audits) and matters of "general applicability" (e.g., rulemaking or policy matters) that distinctively affect a particular industry or identifiable class of persons.

What is “personal and substantial” participation?

Personal participation means that you were personally involved in the matter or that you directed or controlled a subordinate’s participation. *Substantial participation* means that your involvement in the matter was of significance, which includes decision-making, review or recommendation as to an action being taken, signing or approving a final document, and/or participating in a final decision briefing.

What is a “direct and predictable” effect on a financial interest?

The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.

What to do if you’re worried about a conflict

Typically, potential conflict of interests are resolved in one of the following ways:

- 1) Don’t participate. This means that you do not participate in the matter at all, including attending meetings, receiving briefings or being copied on substantive documents. We recommend that you document your recusal in writing, with a copy to OGC/Ethics.
- 2) Divest entirely or get below the regulatory threshold. If the sale will result in a tax liability for capital gains, then contact OGC/Ethics for a “Certificate of Divestiture” before you sell. This will enable you to defer capital gains tax, but you need to get a document from the Office of Government Ethics before you divest.
- 3) Ask for a waiver. Only the Agency’s Designated Agency Ethics Official (DAEO) in OGC is authorized to waive the prohibition of 18 U.S.C. §208(a) where the interest is “not so substantial as to be deemed likely to affect the integrity of services which the Government may expect.” OGC must consult with another federal agency before issuing waivers, which are rarely granted.

If you have any questions, let me know.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Ross, Margaret](#)
To: [Briskin, Jeanne](#)
Subject: Cautionary note based on your 278e filing
Date: Tuesday, December 12, 2017 2:55:00 PM

Dear Jeanne:

Just a heads up: I noticed a few technical reporting errors that didn't prevent me from certifying your report (none presented a potential conflict of interest) – next year, I'll do a better job of completing reviews in a timely way so if anything comes up, we can discuss and fix. These related to assets (b) (6)

[REDACTED]

[REDACTED] They were all reported as assets, though. Also (b) (6)

[REDACTED]

[REDACTED]. In total, there were around 20 line items that raised technical questions, but that did not change the outcome of the conflict of interests assessment.

I highlighted the important sections below.

Best,
Margaret

In reviewing your OGE-278 (Public Financial Disclosure Report) in INTEGRITY, we noticed that you reported owning certain interests that might be affected by the performance of your official duties. These assets appear to be over the regulatory thresholds, so we are sending you this cautionary letter to remind you to take appropriate steps to ensure that you do not have a conflict of interest. We are not concluding that you currently have a conflict of interest. In fact, we tried to come up with hypotheticals that could cause problems in the future, based on previous CPRC work, and could not come up with any. That said – nothing is impossible. Please read the information below and contact an ethics official if anything comes up. Remember, it is your obligation to ensure to that your private interests (including your assets) do not conflict with your public duties. Be vigilant!

Why Do We Raise Concerns?

A criminal statute, 18 U.S.C. §208(a), bars you from participating in any “particular matter” that affects any of your own interests or any imputed interest (e.g., spouse or dependent children). Your interests include not only ownership interests (e.g., stock, bonds, mutual funds) but also the interests of outside entities (e.g., any organization in which you are serving as an officer, director, or trustee) and prospective employers (any entity with which you are seeking future employment). So you can't participate in any particular matter that will have a direct and predictable effect on your financial interest.

The important point to remember here is that 18 U.S.C. §208(a) is a criminal statute. A knowing violation of this statute can result in criminal prosecution and penalties. It's important to understand

the elements of the financial conflict of interest statute. You have to participate “personally and substantially” in a “particular matter” in order for there to be a conflict of interest, and there has to be a “direct and predictable” effect on your financial interests.

What is a particular matter?

A “particular matter” involves any deliberation, decision or action and that is focused on the interests of specific persons/organizations or any identifiable class of persons. It includes “specific party” matters (e.g., contracts, grants, assistance agreements, lawsuits, enforcement action, permits, licenses, audits) and matters of “general applicability” (e.g., rulemaking or policy matters) that distinctively affect a particular industry or identifiable class of persons.

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The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.

YOUR FINANCIAL INTEREST(S) OF CONCERN

We identified the following financial interest(s) that may be affected by the performance of your official duties and that exceed the regulatory exemption levels. Please note that this isn't just about the individual companies, you also exceed regulatory thresholds for matters of general applicability in several sectors (b) (6), etc.). This does not necessarily mean that you have a current conflict of interest, but we want to flag the asset(s) for you.

-

Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. You can still participate if you own less than the levels below:

SPECIFIC PARTY MATTER	MATTER OF GENERAL APPLICABILITY
e.g., an enforcement action against ABC Widget Company e.g., a contracting decision involving ABC Widget Company	e.g., working on a policy or rulemaking that affects all widget manufacturers
≤\$15,000 aggregate in ABC Widget Co. ≤\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)	≤\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.) ≤\$50,000 aggregate in all affected parties (all widget makers)

Don't forget that you have to add together your own ownership interest and any imputed interest. You also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

EXAMPLE: Your father-in-law passed away recently and bequeathed to your spouse shares in an oil and gas company worth \$30,000. You can't work on a specific party matter involving that company and also now can't work on any rulemaking that affects all oil and gas companies.

-

What to do if you're worried about a conflict

If you are concerned that you have a conflict, contact OGC/Ethics immediately. We will go over the available options for you. Typically, potential conflict of interests are resolved in one of the following ways:

1. **Don't participate.** This means that you do not participate in the matter at all, including attending meetings, receiving briefings or being copied on substantive documents. We recommend that you document your recusal in writing, with a copy to OGC/Ethics.
2. **Divest entirely or get below the regulatory threshold.** You can either sell outright on your own or, if the sale will result in a tax liability for capital gains, then you may instead contact OGC/Ethics for a "Certificate of Divestiture" before you sell. This will enable you to defer capital gains tax, but you have to ask OGC/Ethics for assistance before you divest.
3. **Ask for a waiver.** Only the Agency's Designated Agency Ethics Official (DAEO) in OGC is authorized to waive the prohibition of 18 U.S.C. §208(a) where the interest is "not so substantial as to be deemed likely to affect the integrity of services which the Government may expect." OGC must consult with another federal agency before issuing a waiver, which

are rarely granted.

* * * * *

If you need more information or advice, feel free to contact OGC/Ethics at ethics@epa.gov or any of us individually (Margaret Ross, Justina Fugh, Jeanne Duross, Jennie Keith). Any of us or your regional ethics counselor will be happy to assist you.

Margaret Ross | Ethics Officer | Office of General Counsel | US EPA | William Jefferson Clinton Federal Building Room 4310A North | Washington, DC 20460 (for ground deliveries: 20004) | phone 202-564-3221

Fort, Daniel

From: Fort, Daniel
Sent: Tuesday, April 26, 2016 4:21 PM
To: Briskin, Jeanne
Subject: Cautionary note on holdings

Dear Jeanne:

In reviewing a recent OGE-278T (Periodic Public Financial Disclosure Report) in INTEGRITY, we noticed that you reported owning an interest that might be affected by the performance of your official duties. These assets appear to be over the regulatory thresholds, so we are sending you this cautionary letter to remind you to take appropriate steps to ensure that you do not have a conflict of interest. We are not concluding that you currently have a conflict of interest; rather, you should read the information below and contact an ethics official if you have any questions. Remember, it is your obligation to ensure that your private interests (including your assets) do not conflict with your public duties. Be vigilant!

Why Do We Raise Concerns?

A criminal statute, 18 U.S.C. §208(a), bars you from participating in any “particular matter” that affects any of your own interests or any imputed interest (e.g., spouse or dependent children). Your interests include not only ownership interests (e.g., stock, bonds, mutual funds) but also the interests of outside entities (e.g., any organization in which you are serving as an officer, director, or trustee) and prospective employers (any entity with which you are seeking future employment). So you can’t participate in any particular matter that will have a direct and predictable effect on your financial interest.

The important point to remember here is that 18 U.S.C. §208(a) is a criminal statute. A knowing violation of this statute can result in criminal prosecution and penalties. It’s important to understand the elements of the financial conflict of interest statute. You have to participate “personally and substantially” in a “particular matter” in order for there to be a conflict of interest, and there has to be a “direct and predictable” effect on your financial interests.

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The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.

YOUR FINANCIAL INTEREST(S) OF CONCERN

We identified the following financial interest(s) that may be affected by the performance of your official duties and that exceed the regulatory exemption levels. This does not necessarily mean that you have a current conflict of interest, but we want to flag the asset(s) for you:

- (b) (6), (b) (3) (A)

Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. You can still participate if you own less than the levels below:

SPECIFIC PARTY MATTER	MATTER OF GENERAL APPLICABILITY
e.g., an enforcement action against ABC Widget Company	e.g., working on a rulemaking that affects all widget manufacturers
<p>≤\$15,000 aggregate in ABC Widget Co.</p> <p>≤\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)</p>	<p>≤\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.)</p> <p>≤\$50,000 aggregate in all affected parties (all widget makers)</p>

Don't forget that you have to add together your own ownership interest and any imputed interest. You also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

EXAMPLE: Your father-in-law passed away recently and bequeathed to your spouse shares in an oil and gas company worth \$30,000. You can't work on a specific party matter involving that company and also now can't work on any rulemaking that affects all oil and gas companies.

What to do if you're worried about a conflict

If you are concerned that you have a conflict, contact OGC/Ethics immediately. We will go over the available options for you. Typically, potential conflict of interests are resolved in one of the following ways:

- 1) Don't participate. This means that you do not participate in the matter at all, including attending meetings, receiving briefings or being copied on substantive documents. We recommend that you document your recusal in writing, with a copy to OGC/Ethics.
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- 3) Ask for a waiver. Only the Agency's Designated Agency Ethics Official (DAEO) in OGC is authorized to waive the prohibition of 18 U.S.C. §208(a) where the interest is "not so substantial as to be deemed likely to affect the integrity of services which the Government may expect." OGC must consult with another federal agency before issuing a waiver, which are rarely granted.

* * * * *

If you need more information or advice, feel free to contact OGC/Ethics at ethics@epa.gov or any of us individually (Daniel Fort, Justina Fugh, Jeanne Duross, Jennie Keith). Any of us or your regional ethics counselor will be happy to assist you.

From: [Briskin, Jeanne](#)
To: [ethics](#)
Subject: extension request 2018 annual report OGE 279
Date: Friday, April 27, 2018 2:04:09 PM
Attachments: [image001.png](#)

May I please have a 90 day extension to submit my 2018 annual report. I have two upcoming trips (Regions 8 and 10) that I am preparing for, plus a heavy workload in developing our biannual training which is slated to launch June 10 along with other workload obligations.

I have started preparing my report, but need more time to carefully extract complete and accurate data from my extensive documentation.

Thank you for considering my request.

Jeanne Briskin

Director, Conflict Prevention and Resolution Center

Dispute Resolution Specialist

U.S. Environmental Protection Agency

"Making Agreement Easier" | (202) 564-4583

<http://intranet.epa.gov/adr/or> or <http://www.epa.gov/adr>

Watch this [3 minute video](#) to learn more about mediation and facilitation at EPA



From: [Fugh, Justina](#)
To: [Briskin, Jeanne](#)
Subject: following up: technical issues with your 278
Date: Friday, June 18, 2021 11:03:00 AM

Hi Jeanne,

I'm working on a cautionary memo for you given your asset ownership, but let me start with a few other "housekeeping" issues regarding your financial disclosure report. I have certified your report but want you to know that I made a few adjustments for you:

- You had added (b) (6), (b) (3) (A) [REDACTED]
[REDACTED] Congrats on finding a date! Just so you know, I waived the late filing fee for reporting the exchange because, frankly, those things can be murky when it comes to any notification,
- You do not need to provide the amount of your spouse's income from (b) (6) [REDACTED] but you do have to report the line of business. I changed the entry to read (b) (6), (b) (3) (A) [REDACTED] and
- I adjusted the EIF notations. For stock, the EIF answer is not "no" but rather "N/A" that stands for "no underlying assets." I also had to add "yes" to some of your (b) (6) [REDACTED] that had been left blank. Finally, in some but not all places, I added the full name of the asset. Please note that the filing requirement for you is to report the full name of the asset and then, optionally, you may add the ticker symbol. We really should not be accepting entries on either the 278T or the 278 that have just the ticker symbol because we have to look them up. In future filings, please don't provide only the ticker symbol.

Later this weekend, I'll send you this year's cautionary note about your need to recuse from specific party matters as well as matters of general applicability that apply to various sectors.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Briskin, Jeanne](#)
Subject: RE: info about CDs
Date: Thursday, February 6, 2020 5:02:00 PM

2 to 3 weeks.

From: Briskin, Jeanne
Sent: Thursday, February 06, 2020 12:18 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Re: info about CDs
PS: What is the typical timeframe for this process?
Thanks again
Jeanne

On Feb 6, 2020, at 12:16 PM, Briskin, Jeanne <Briskin.Jeanne@epa.gov> wrote:

(b) (6), (b) (5)

Thanks for
letting me know who to work with on this.
Jeanne

On Dec 31, 2019, at 9:23 AM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Jeanne,
First attachment is the easy-to-read brochure, followed by the actual regulation and then the latest advisory from the Office of Government Ethics so you can see exactly how we go about making the request for a CD.

Enjoy!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA |
Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal
Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip
code) | phone 202-564-1786 | fax 202-564-1772

<Smooth Sales Pamphlet.pdf>
<CD Regulation - Subpart J.pdf>
<NEW CD Advisory PA-19-10.pdf>

§ 2634.909

statement of the information required to be reported according to the provisions of this subpart for the preceding calendar year, or for any portion of that period not covered by a previous confidential or public financial disclosure report filed under this part.

(b) *New entrants.* Each confidential financial disclosure report filed under § 2634.903(b) of this subpart shall include, on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months from the date of filing.

[57 FR 11826, Apr. 7, 1992, as amended at 71 FR 28239, May 16, 2006]

§ 2634.909 Procedures, penalties, and ethics agreements.

(a) The provisions of subpart F of this part govern the filing procedures and forms for, and the custody and review of, confidential disclosure reports filed under this subpart.

(b) For penalties and remedial action which apply in the event that the reporting individual fails to file, falsifies information, or files late with respect to confidential financial disclosure reports, see subpart G of this part.

(c) Subpart H of this part on ethics agreements applies to both the public and confidential reporting systems under this part.

Subpart J—Certificates of Divestiture

SOURCE: 69 FR 44894, July 28, 2004, unless otherwise noted.

§ 2634.1001 Overview.

(a) *Scope.* 26 U.S.C. 1043 and the rules of this subpart allow an eligible person to defer paying capital gains tax on property sold to comply with conflict of interest requirements. To defer the gains, an eligible person must obtain a Certificate of Divestiture from the Director of the Office of Government Ethics before selling the property. This subpart describes the circumstances when an eligible person may obtain a Certificate of Divestiture and estab-

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lishes the procedure that the Office of Government Ethics uses to issue Certificates of Divestiture.

(b) *Purpose.* The purpose of section 1043 and this subpart is to minimize the burden that would result from paying capital gains tax on the sale of assets to comply with conflict of interest requirements. Minimizing this burden aids in attracting and retaining highly qualified personnel in the executive branch and ensures the confidence of the public in the integrity of Government officials and decision-making processes.

§ 2634.1002 Role of the Internal Revenue Service.

The Internal Revenue Service (IRS) has jurisdiction over the tax aspects of a divestiture made pursuant to a Certificate of Divestiture. Eligible persons seeking to defer capital gains:

(a) Must follow IRS requirements for reporting dispositions of property and electing under section 1043 not to recognize capital gains; and

(b) Should consult a personal tax advisor or the IRS for guidance on these matters.

§ 2634.1003 Definitions.

For purposes of this subpart:

Eligible person means:

(1) Any officer or employee of the executive branch of the Federal Government, except a person who is a special Government employee as defined in 18 U.S.C. 202;

(2) The spouse or any minor or dependent child of the individual referred to in paragraph (1) of this definition; and

(3) Any trustee holding property in a trust in which an individual referred to in paragraph (1) or (2) of this definition has a beneficial interest in principal or income.

Permitted property means:

(1) An obligation of the United States; or

(2) A diversified investment fund. A diversified investment fund is a diversified mutual fund or diversified unit investment trust, as defined in 5 CFR 2640.102(a), (k) and (u);

Office of Government Ethics

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(3) Provided, however, a permitted property cannot be any holding prohibited by statute, regulation, rule, or Executive order. As a result, requirements applicable to specific agencies and positions may limit an eligible person's choices of permitted property. An employee seeking a Certificate of Divestiture should consult the appropriate designated agency ethics official to determine whether a statute, regulation, rule, or Executive order may limit choices of permitted property.

§ 2634.1004 General rule.

(a) The Director of the Office of Government Ethics may issue a Certificate of Divestiture for specific property in accordance with the procedures of § 2634.1005 of this subpart if:

(1) The Director determines that divestiture of the property by an eligible person is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or Executive order; or

(2) A congressional committee requires divestiture as a condition of confirmation.

(b) The Director of the Office of Government Ethics cannot issue a Certificate of Divestiture for property that already has been sold.

Example 1 to § 2634.1004: An employee is directed to divest shares of stock, a limited partnership interest, and foreign currencies. If the sale of these assets will result in capital gains under the Internal Revenue Code, the employee may request and receive a Certificate of Divestiture.

Example 2 to § 2634.1004: An employee of the Department of Commerce is directed to divest his shares of XYZ stock acquired through the exercise of options held in an employee benefit plan. His gain from the sale of the stock will be treated as ordinary income. Because only capital gains realized under Federal tax law are eligible for deferral under section 1043, a Certificate of Divestiture cannot be issued for the sale of the XYZ stock.

Example 3 to § 2634.1004: During her Senate confirmation hearing, a nominee to a Department of Defense (DOD) position is directed to divest stock in a DOD contractor as a condition of her confirmation. Eager to comply with the order to divest, the nominee sells her stock immediately after the hearing and prior to being confirmed by the Senate. Once she is a DOD employee, she requests a Certificate of Divestiture for the stock. Because the Office of Government

Ethics cannot issue a Certificate of Divestiture for property that has already been divested, the employee's request for a Certificate of Divestiture will be denied.

Example 4 to § 2634.1004: After receiving a Certificate of Divestiture, the spouse of a Food and Drug Administration employee sold stock in a regulated company. Between the time of the request for the Certificate of Divestiture and the sale of the stock, the stock price dropped and the spouse sold the stock at a loss. Because the sale of the stock did not result in capital gains, the spouse has no need for the Certificate of Divestiture and cannot submit it to the Internal Revenue Service for deferral of gains. No further action need be taken by the employee or the employee's spouse in connection with the Certificate of Divestiture.

§ 2634.1005 How to obtain a Certificate of Divestiture.

(a) *Employee's request to the designated agency ethics official.* An employee seeking a Certificate of Divestiture must submit a written request to the designated agency ethics official at his or her agency. The request must contain:

(1) A full and specific description of the property that will be divested. For example, if the property is corporate stock, the request must include the number of shares for which the eligible person seeks a Certificate of Divestiture;

(2) A brief description of how the eligible person acquired the property;

(3) A statement that the eligible person holding the property has agreed to divest the property; and

(4)(i) The date that the requirement to divest first applied; or

(ii) The date the employee first agreed that the eligible person would divest the property in order to comply with conflict of interest requirements.

(b) *Designated agency ethics official's submission to the Office of Government Ethics.* The designated agency ethics official must forward to the Director of the Office of Government Ethics the employee's written request described in paragraph (a) of this section. In addition, the designated agency ethics official must submit:

(1) A copy of the employee's latest financial disclosure report. If the employee is not required to file a financial disclosure report, the designated agency ethics official must obtain from the employee, and submit to the Office

of Government Ethics, a listing of the employee's interests that would be required to be disclosed on a confidential financial disclosure report excluding gifts and travel reimbursements. For purposes of this listing, the reporting period is the preceding twelve months from the date the requirement to divest first applied or the date the employee first agreed that the eligible person would divest the property;

(2) An opinion that describes why divestiture of the property is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or Executive order; and

(3) A brief description of the employee's position or a citation to a statute that sets forth the duties of the position.

(c) *Divestitures required by a congressional committee.* In the case of a divestiture required by a congressional committee as a condition of confirmation, the designated agency ethics official must submit appropriate evidence that the committee requires the divestiture. A transcript of congressional testimony or a written statement from the designated agency ethics official concerning the committee's custom regarding divestiture are examples of evidence of the committee's requirements.

(d) *Divestitures for property held in a trust.* In the case of divestiture of property held in a trust, the employee must submit a copy of the trust instrument, as well as a list of the trust's current holdings, unless the holdings are listed on the employee's most recent financial disclosure report. In certain cases involving divestiture of property held in a trust, the Director may not issue a Certificate of Divestiture unless the parties take actions which, in the opinion of the Director, are appropriate to exclude, to the extent practicable, parties other than eligible persons from benefitting from the deferral of capital gains. Such actions may include, as permitted by applicable State law, division of the trust into separate portfolios, special distributions, dissolution of the trust, or anything else deemed feasible by the Director, in his or her sole discretion.

Example 1 to paragraph (d): An employee has a 90% beneficial interest in an irrevocable trust created by his grandfather. His four adult children have the remaining 10% beneficial interest in the trust. A number of the assets held in the trust must be sold to comply with conflicts of interest requirements. Due to State law, no action can be taken to separate the trust assets. Because the adult children have a small interest in the trust and the assets cannot be separated, the Director may consider issuing a Certificate of Divestiture to the trustee for the sale of all of the conflicting assets.

(e) *Time requirements.* A request for a Certificate of Divestiture does not extend the time in which an employee otherwise must divest property required to be divested pursuant to an ethics agreement, or prohibited by statute, regulation, rule, or Executive order. Therefore, an employee must submit his or her request for a Certificate of Divestiture as soon as possible once the requirement to divest becomes applicable. The Office of Government Ethics will consider requests submitted beyond the applicable time period for divestiture. If the designated agency ethics official submits a request to the Office of Government Ethics beyond the applicable time period for divestiture, he must explain the reason for the delay. (See 5 CFR 2634.802 and 2635.403 for rules relating to the time requirements for divestiture.)

(f) *Response by the Office of Government Ethics.* After reviewing the materials submitted by the employee and the designated agency ethics official, and making a determination that all requirements have been met, the Director will issue a Certificate of Divestiture. The certificate will be sent to the designated agency ethics official who will then forward it to the employee.

§ 2634.1006 Rollover into permitted property.

(a) *Reinvestment of proceeds.* In order to qualify for deferral of capital gains, an eligible person must reinvest the proceeds from the sale of the property divested pursuant to a Certificate of Divestiture into permitted property during the 60-day period beginning on the date of the sale. The proceeds may be reinvested into one or more types of permitted property.

Example 1 to paragraph (a): A recently hired employee of the Department of Transportation receives a Certificate of Divestiture for the sale of a large block of stock in an airline. He may split the proceeds of the sale and reinvest them in an S&P Index Fund, a diversified Growth Stock Fund, and U.S. Treasury bonds.

Example 2 to paragraph (a): The Secretary of Treasury sells certain stock after receiving a Certificate of Divestiture and is considering reinvesting the proceeds from the sale into U.S. Treasury securities. However, because the Secretary of the Treasury is prohibited by 31 U.S.C. 329 from being involved in buying obligations of the United States Government, the Secretary cannot reinvest the proceeds in such securities. However, she may invest the proceeds in a diversified mutual fund. See the definition of *permitted property* at § 2634.1003.

(b) *Internal Revenue Service reporting requirements.* An eligible person who elects to defer the recognition of capital gains from the sale of property pursuant to a Certificate of Divestiture must follow Internal Revenue Service rules for reporting the sale of the property and the reinvestment transaction.

§ 2634.1007 Cases in which Certificates of Divestiture will not be issued.

The Director of the Office of Government Ethics, in his or her sole discretion, may deny a request for a Certificate of Divestiture in cases where an unfair or unintended benefit would result. Examples of such cases include:

(a) *Employee benefit plans.* The Director will not issue a Certificate of Divestiture if the property is held in a pension, profit-sharing, stock bonus, or other employee benefit plan and can otherwise be rolled over into an eligible tax-deferred retirement plan within the 60-day reinvestment period.

(b) *Complete divestiture.* The Director will not issue a Certificate of Divestiture unless the employee agrees to divest all of the property that presents a conflict of interest, as well as other similar or related property that presents a conflict of interest under a Federal conflict of interest statute, regulation, rule, or Executive order. However, any property that qualifies for a regulatory exemption at 5 CFR part 2640 need not be divested for a Certificate of Divestiture to be issued.

Example 1 to paragraph (b): A Department of Agriculture employee owns shares of

stock in Better Workspace, Inc. valued at \$25,000. As part of his official duties, the employee is assigned to evaluate bids for a contract to renovate office space at his agency. The Department's designated agency ethics official discovers that Better Workspace is one of the companies that has submitted a bid and directs the employee to sell his stock in the company. Because Better Workspace is a publicly traded security, the employee could retain up to \$15,000 of the stock under the regulatory exemption for interests in securities at 5 CFR 2640.202(a). He would be able to request a Certificate of Divestiture for the \$10,000 of Better Workspace stock that is not covered by the exemption. Alternatively, he could request a Certificate of Divestiture for the entire \$25,000 worth of stock. If he chooses to sell his stock down to an amount permitted under the regulatory exemption, the Office of Government Ethics will not issue additional Certificates of Divestiture if the value of the stock goes above \$15,000 again.

(c) *Property acquired under improper circumstances.* The Director will not issue a Certificate of Divestiture:

(1) If the eligible person acquired the property at a time when its acquisition was prohibited by statute, regulation, rule, or Executive order; or

(2) If circumstances would otherwise create the appearance of a conflict with the conscientious performance of Government responsibilities.

§ 2634.1008 Public access to a Certificate of Divestiture.

A Certificate of Divestiture issued pursuant to the provisions of this subpart is available to the public in accordance with the rules of § 2634.603 of this part.

APPENDIX A TO PART 2634—CERTIFICATE OF INDEPENDENCE (FORM APPROVED: OMB CONTROL NO. 3209-0007)

The Certificate of Independence required by § 2634.406(b) shall be executed as follows:

CERTIFICATE OF INDEPENDENCE

With respect to the trust of _____ (Settlor), which has been submitted to the Office of Government Ethics for certification pursuant to the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended), the undersigned proposed [Trustee] [_____] of such trust is a financial institution which is eligible to serve in such fiduciary capacity in accordance with section 102(f)(3)(A) of such Act:

FIRST: The undersigned is (check one)—

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() a bank, as defined in 12 U.S.C. 1841(c), or

() an investment adviser, as defined in 15 U.S.C. 80b-2(a)(11),

not more than 10 percent of which is owned or controlled by a single individual.

SECOND: The undersigned—

(1) Is independent of and unassociated with any interested party so that the undersigned cannot be controlled or influenced in the administration of the trust by any interested party; and

(2) is not and has not been affiliated with any interested party, and is not a partner of, or involved in any joint venture or other investment or business with any interested party.

THIRD: Any director, officer, or employee of the undersigned—

(1) Is independent of and unassociated with any interested party so that such director, officer, or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(2) Is not and has not been employed by any interested party, nor a director, officer, or employee of any organization affiliated with any interested party, and is not and has not been a partner of, or involved in any joint venture or other investment or business with, any interested party; and

(3) Is not a relative of any interested party.

FOURTH: The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date _____

(firm) _____

By: _____

(title) _____

NOTE: See Appendix C of this part for Privacy Act and Paperwork Reduction Act notices.

[57 FR 11829, Apr. 7, 1992, as amended at 63 FR 58620, Nov. 2, 1998]

APPENDIX B TO PART 2634—CERTIFICATE OF COMPLIANCE (FORM APPROVED: OMB CONTROL NO. 3209-0007)

The Certificate of Compliance required by § 2634.408(b) shall be executed as follows:

CERTIFICATE OF COMPLIANCE

With respect to the qualified blind trust (qualified diversified trust) of _____ (Settlor), the undersigned, the approved [Trustee] [_____] of such trust, pursuant to 5 CFR 2634.406, has served in such fiduciary capacity during the calendar year [or for the period beginning _____ and ending _____] and is eligible to continue in such capacity by virtue of the following:

FIRST: The undersigned (and any director, officer, or employee) has not knowingly or negligently, and will not—

(A) disclose any information to an interested party with respect to the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations (including 5 CFR 2634.403(b)(12)(i) for a qualified blind trust, and 5 CFR 2634.404(c)(12)(i) for a qualified diversified trust), or the trust instrument;

(B) acquire any holding the ownership of which is prohibited by, or not in accordance with, applicable statute, regulation, or the terms of the trust instrument;

(C) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by title I of the Act, the implementing regulations (including 5 CFR 2634.403(b)(12)(iii) for a qualified blind trust and 5 CFR 2634.404(c)(12)(iii), for a qualified diversified trust), or the trust instrument;

(D) fail to file any document required by title I of the Act, the implementing regulations (including 5 CFR 2634.408(b) and (c)), or the trust instrument; or

(E) violate or fail to comply with any provision or requirement of title I of the Act, the implementing regulations, or the trust instrument.

SECOND: The undersigned (and any director, officer, or employee) will not knowingly or negligently engage in the above-mentioned activities.

THIRD: The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date _____

(firm) _____

By: _____

(title) _____

NOTE: See appendix C of this part for Privacy Act and Paperwork Reduction Act notices.

[57 FR 11830, Apr. 7, 1992; 57 FR 21855, May 22, 1992]

APPENDIX C TO PART 2634—PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICES FOR APPENDIXES A AND B

PRIVACY ACT STATEMENT

Section 102(f) of the Ethics in Government Act of 1978 as amended (the "Ethics Act") (5 U.S.C. App.) and subpart D of 5 CFR part 2634 of the regulations of the Office of Government Ethics (OGE) require the reporting of this information for the administration of qualified trusts under the Ethics Act. The primary use of the information on this certificate is for review by Government officials of OGE and the agency of the Government employee for whom the trust is established to determine compliance with applicable Federal laws and regulations as regards qualified trusts. Additional disclosures of the information on this certificate may be made:

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(1) to any requesting person in accordance with the access provisions of section 105 of the Ethics Act;

(2) to a Federal, State or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation;

(3) to a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena;

(4) to a source when necessary to obtain information relevant to a conflict of interest issue;

(5) to the National Archives and Records Administration or the General Services Administration in records management inspections;

(6) to the Office of Management and Budget during legislative coordination on private relief legislation; and

(7) in response to a discovery request or for the appearance of a witness in a pending judicial or administrative proceeding, if the information is relevant to the subject matter.

Knowing or willful falsification of information on this certificate or failure to file or report information required to be reported under title I of the Ethics Act and 5 CFR part 2634 of the OGE regulations may lead to disqualification as a trustee or other fiduciary as well as possible disqualification of the underlying trust itself. Knowing and willful falsification of information required under the Ethics Act and the regulations may also subject you to criminal prosecution.

PUBLIC BURDEN INFORMATION AND PAPERWORK REDUCTION ACT STATEMENT

This collection of information is estimated to take an average of twenty minutes per response. You can send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Deputy Director for Administration and Information Management, U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. *Do not* send your completed certificate to that official; rather, send it to the Director of the Office of Government Ethics at that address as provided in the part 2634 regulation.

Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number, 3209-0007, is displayed here and in the headings of the OGE model qualified trust certificates of independence and com-

pliance, appendixes A and B to this part 2634).

[57 FR 11830, Apr. 7, 1992, as amended at 63 FR 58620, Nov. 2, 1998; 67 FR 22349, May 3, 2002]

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

Subpart A—General Provisions

Sec.

- 2635.101 Basic obligation of public service.
- 2635.102 Definitions.
- 2635.103 Applicability to members of the uniformed services.
- 2635.104 Applicability to employees on detail.
- 2635.105 Supplemental agency regulations.
- 2635.106 Disciplinary and corrective action.
- 2635.107 Ethics advice.

Subpart B—Gifts From Outside Sources

- 2635.201 Overview.
- 2635.202 General standards.
- 2635.203 Definitions.
- 2635.204 Exceptions.
- 2635.205 Proper disposition of prohibited gifts.

Subpart C—Gifts Between Employees

- 2635.301 Overview.
- 2635.302 General standards.
- 2635.303 Definitions.
- 2635.304 Exceptions.

Subpart D—Conflicting Financial Interests

- 2635.401 Overview.
- 2635.402 Disqualifying financial interests.
- 2635.403 Prohibited financial interests.

Subpart E—Impartiality in Performing Official Duties

- 2635.501 Overview.
- 2635.502 Personal and business relationships.
- 2635.503 Extraordinary payments from former employers.

Subpart F—Seeking Other Employment

- 2635.601 Overview.
- 2635.602 Applicability and related considerations.
- 2635.603 Definitions.
- 2635.604 Disqualification while seeking employment.
- 2635.605 Waiver or authorization permitting participation while seeking employment.



August 27, 2019
PA-19-10

PROGRAM ADVISORY

TO: Designated Agency Ethics Officials

FROM: Emory A. Rounds, III
Director

SUBJECT: Revised Format for Requesting a Certificate of Divestiture

A certificate of divestiture (CD) allows an eligible person to defer paying capital gains taxes on property that is sold to comply with conflict of interest requirements.¹ The CD must be received from the Director of the U.S. Office of Government Ethics (OGE) before the property is sold. In 2007, OGE developed a suggested format for an agency to use when requesting a CD for an eligible person.² OGE is now revising the suggested format.

This Program Advisory provides a revised format incorporating recent changes in the CD regulation, which became effective on January 1, 2019,³ as well as incorporating input received from ethics officials on ways to improve the efficiency and consistency of the CD program. In addition to the substantive revisions, OGE moved the continuation pages to the end of the format, which will make navigation easier. Finally, in order to expedite requesting and processing a CD request if more than six holdings are being divested, OGE now asks that the agency provide the requested information regarding the holdings in an Excel spreadsheet or Word document. Attached is a table highlighting the most significant changes to the CD request format.

Use of the CD request format remains optional; however, in OGE's experience, using the format streamlines the process for requesting and processing CDs. The revised CD format is available on the OGE website in the Forms Library and in the Public Financial Disclosure and Confidential Financial Disclosure sections under Helpful Resources.

If you have any questions, please contact Elaine Newton, Associate Counsel, at 202-482-9265.

Attachments

¹ 26 U.S.C. § 1043; 5 C.F.R. pt. 2634, subpt. J.

² See OGE DAEOgram DO-07-035 (Sept. 25, 2007).

³ The amendments to 5 C.F.R. part 2634, subpart J include the requirement to inform OGE of any circumstances that the designated agency ethics official believes weigh against the issuance of a CD and incorporate OGE's long-standing practice of not issuing CDs for sales of assets held in tax-deferred or tax-advantaged accounts that do not incur capital gains.



Attachment 1: Significant Changes to the Request for a Certificate of Divestiture Format

Section of the Format	Changes
1: Property being divested (5 C.F.R. § 2634.1005(a)(1))	<ul style="list-style-type: none"> • This section has been slightly rearranged to highlight the information that is being requested. • The number of holdings that can be listed on the format itself is limited to six. • An Excel spreadsheet or Word document must be used when a CD is requested for more than six holdings. (There is no longer a separate continuation page for agencies to list additional holdings.)
5: Additional items	<p>5a. Adds a new question on whether the employee has been informed of their obligation to recuse.</p> <p>5b. Revises the question on whether the property was acquired prior to appointment. If the property was acquired after appointment, the continuation page should be used to explain how the property was acquired (e.g., gift, inheritance, etc.) (5 C.F.R. § 2634.1005(a)(2)).</p> <p>5c. Adds a new question on whether divestiture will incur capital gains. (This new question incorporates former question 5c on whether the property was acquired through an employee benefit plan (5 C.F.R. § 2634.1007(a).)</p> <p>5d. Revises the question on whether any other holdings are “similar or related” to the property for which the eligible person is seeking a CD (5 C.F.R. § 2634.1007(c)).</p> <p>5e. Revises the question on whether the property is held in a tax-deferred or tax-advantaged account, which allows the eligible person to exchange the property for permissible property without incurring capital gains (5 C.F.R. § 2634.1007(b)).</p> <p>5f. Revises the question on whether the request is within the divestiture deadline (5 C.F.R. § 2634.1005(e)).</p>
6: Any other factors that weigh against issuing a certificate of divestiture (5 C.F.R. § 2634.1005(b)(3))	Adds the new question to reflect a change in the regulation.

Section of the Format	Changes
7: Other required material	7b. Revises the question requiring a copy of the employee's most recent financial disclosure report by including any required Periodic Transaction Reports (5 C.F.R. § 2634.1005(b)(1)).
Continuation Pages	The continuation pages are now at the end of the format.

Attachment 2**REQUEST FOR A CERTIFICATE OF DIVESTITURE**
(must be completed by the agency, not by the requesting employee)

Requesting employee's name and position title:	Employing agency and component:
Agency point of contact:	Telephone number and email address for agency point of contact:
Signature of DAEO or ADAEO:	Date signed:

For complete instructions on requesting a Certificate of Divestiture (CD), please review 5 C.F.R. part 2634, subpart J.

1. Provide the requested information about the property being divested and the owner(s) of that property (see sample table to the right):

(a) description of the property: include the name of the property being divested;

(b) quantity or percentage owned: quantity may be represented by the number of shares of stock, units owned, or percentage of the partnership owned;

(c) owner(s) of the property: provide the full name of the owner(s) of the property; and

(d) relationship to the employee: indicate whether each property owner is one of the following: (i) a government employee; (ii) a spouse, a minor child or a dependent child of the government employee; or (iii) a trustee of a trust for the benefit of the government employee, the spouse, minor or dependent child of the government employee.

(a) Description of the property	(b) Quantity or percentage owned	(c) Owner(s) of the property	(d) Relationship to the employee
McDonald's Corp.	57 shares	John A. Jones	self
General Electric Co.	251 shares	John A. Jones (joint) Mary B. Jones	self spouse
Play Toys, LP	12.24% interest	Mary B. Jones	spouse
Merck & Co., Inc.	33 shares	William C. Smith	trustee
Coca-Cola, Co.	55 shares	John A. Jones (as custodian) Robert D. Jones	self dependent child

Please provide the requested information in an Excel spreadsheet or Word document if a CD is being requested for more than six holdings. Please do not submit financial statements.

(a) Description of the property	(b) Quantity or percentage owned	(c) Owner(s) of the property	(d) Relationship to the employee

Clear Form

(a) Description of the property	(b) Quantity or percentage owned	(c) Owner(s) of the property	(d) Relationship to the employee

2. Provide a brief description of the employee's position or provide a citation to a statute or regulation that sets forth the duties of the position. (If additional space is needed, please use the [continuation page](#) at the end of the format.)

3. Provide a detailed explanation of the basis for your conclusion that divestiture is reasonably necessary to comply with Federal ethics rules. (If additional space is needed, please use the [continuation page](#) at the end of the format.)

4. Provide the date that the requirement to divest first applied or the date the employee first agreed that the eligible person would divest the property in order to comply with conflict of interest requirements. (If additional space is needed, please use the [continuation page](#) at the end of the format.)

5. Please address all items below (If additional space is needed, please use the [continuation page](#) at the end of the format.):

a. Has the employee been informed of their obligation to recuse from particular matters in which the employee would have a disqualifying financial interest arising from the property described in the employee's request for a Certificate of Divestiture?

Yes ☐ No ☐ (if no, please explain using the [continuation page](#))

b. Was the property acquired prior to appointment?

Yes ☐ No ☐ (if no, please explain using the [continuation page](#))

Clear Form

c. Will divestiture of the property incur capital gains rather than ordinary income?

Yes ☐ No ☐ (if no, please explain using the [continuation page](#))

d. Has the ethics office confirmed that none of the employee's other financial interests are "similar or related" to the property being divested (i.e., will divestiture resolve the entire conflict)?

Yes ☐ No ☐ (if no or if additional explanation is needed, please explain using the [continuation page](#))

e. Has the ethics office confirmed that the property being divested is not held in an account that can be rolled into permissible property in a tax-deferred account without incurring capital gains (e.g., IRA, 401(k), etc.)?

Yes ☐ No ☐ (if no, please explain using the [continuation page](#))

f. Is the request within the divestiture deadline?

Yes ☐ No ☐ (if no, please explain using the [continuation page](#))

6. Are there any other factors that are not addressed above that weigh against issuing a certificate of divestiture (e.g., is the ethics office aware that the employee may be leaving the Government soon, or is under investigation or subject to a disciplinary action related to the conflict of interest requirements)? If yes, provide a detailed statement identifying the factors that weigh against issuing a certificate of divestiture on a [continuation page](#).

Yes ☐ No ☐

7. Please confirm that you are submitting a completed CD package, including:

a. A written request from the employee that includes an unconditional statement that the eligible person holding the property (i.e., the employee, spouse, and/or relevant trustee) has agreed to divest the property.

Yes ☐ No ☐

b. A copy of the employee's most recent financial disclosure report including any required subsequent Periodic Transaction Reports, or a list of the equivalent information if the employee does not file a financial disclosure report.

Yes ☐ No ☐

c. A copy of the trust document if any of the property is held in a trust.

N/A ☐ Yes ☐ No ☐

Clear Form

8. Please provide any additional information that you would like OGE to consider when processing the request. (If additional space is needed, please use the [continuation page](#) at the end of the format.)

Please send the completed CD package to CD@oge.gov or to the following address: Director, U.S. Office of Government Ethics, 1201 New York Avenue, NW, Suite 500, Washington, DC 20005-3917.

Clear Form

Print

REQUEST FOR A CERTIFICATE OF DIVESTITURE
Continuation Page

Before each response, please indicate the question for which you are providing additional information.

REQUEST FOR A CERTIFICATE OF DIVESTITURE
Continuation Page

Before each response, please indicate the question for which you are providing additional information.

SMOOTH SALES

A BEGINNER'S GUIDE TO CERTIFICATES OF DIVESTITURE

Introduction

If you are an executive branch employee of the Federal Government or plan to become one, at some point you may have to sell certain assets to avoid a conflict of interest or the appearance of a conflict. Under tax rules, the sale of an asset may cause you to have a taxable capital gain which must be reported to the Internal Revenue Service. However, to make it easier for you and your family to comply with ethics rules, the tax laws provide that before you sell your asset, the Director of the Office of Government Ethics (OGE) may issue a Certificate of Divestiture (called a CD) which will allow you to defer the capital gains tax. The CD does not eliminate the capital gains tax; it simply defers payment of the tax to some future date.

The Office of Government Ethics is the agency that administers the CD program. The Director of OGE issues CDs to employees through their designated agency ethics officials.

This pamphlet provides an overview of the CD program. It contains answers to some questions often asked by employees who are required to divest property because of a conflict of interest. This pamphlet does not cover every issue that may arise, and it is not a substitute for counseling. For specific advice about your situation, you should consult your designated agency ethics official.

Frequently Asked Questions

Can I get a CD any time I sell property?

No. A CD can be obtained only if:

- ☐ you have not yet sold the property;
- ☐ the sale is required to eliminate or prevent a conflict of interest;
- ☐ there would be a capital gain; and
- ☐ the request is submitted through your designated agency ethics official and approved by the Director of OGE.

Requests for CDs are considered on a case-by-case basis and may not always be approved. If your request involves a complicated situation, such as when the property to be sold is held in a trust, you should talk to your designated agency ethics official or OGE as soon as possible.

Who is eligible for a CD?

- ☐ Officers and employees of the executive branch of the Federal Government, except a person who is a "special Government employee," as defined in 18 U.S.C § 202;
- ☐ The spouse or minor or dependent child of such persons; and
- ☐ Under certain circumstances, a trustee holding property in a trust.

How do I apply for a CD?

☐ You must make a written request to your designated agency ethics official that includes a commitment to divest within a specified time period.

☐ Your designated agency ethics official then sends your request to the Director of OGE with:

- 1 a description of the property to be sold;
- 2 a statement from your designated agency ethics official indicating that the divestiture is necessary; and
- 3 if you file a financial disclosure report, a copy of your report. If you do not file a financial disclosure report, your designated agency ethics official must submit a memorandum that contains the information required to be disclosed in such a report.

What are the time requirements for requesting a CD?

- ☐ If you are divesting property because of an ethics agreement, your designated agency ethics official must submit your request and the required materials to OGE within three months of the date of the ethics agreement.
- ☐ If you are selling property required to be divested by statute, regulation, or executive order, your designated agency ethics official must submit your request and the required materials to OGE within

three months and ten days after the requirement becomes applicable.

What should I do once I receive the CD?

You must sell the property described in the CD within the required time frame and reinvest in so-called “permitted property” within 60 days, including the date of sale. Keep the Certificate and file it with IRS Form 8824 along with your Federal income tax return for the year in which the sale took place.

In what “permitted property” must I reinvest?

- ☐ United States obligations, such as Treasury bills, bonds, and notes; or
- ☐ open-end diversified mutual funds.

Note that when you sell permitted property or a United States obligation matures, you will incur the capital gains tax that was deferred.

Where can I learn more about CDs?

You can consult with your designated agency ethics official or OGE

with any questions regarding CDs or the CD program. However, since your agency ethics official and OGE cannot provide you with tax advice, you should ask your personal tax advisor, accountant, or attorney if you have questions about the tax implications of a CD. They can find detailed information at:

- ☐ Section 1043 of the Internal Revenue Code of 1986; and
- ☐ Regulations starting at 5 C.F.R. § 2634.1001.

SMOOTH SALES

A BEGINNER’S GUIDE TO CERTIFICATES OF DIVESTITURE



U.S. Office of Government Ethics

From: [Briskin, Jeanne](#)
To: [ethics](#)
Subject: Need to amend OGE278 for 2018
Date: Friday, April 26, 2019 4:12:47 PM

Of course after I hit submit I realized that I accidentally left off a couple of holdings. Would you please send it back so I can correct it?

Thanks
Jeanne

From:[Fugh, Justina](#)**To:**

[Adams, Elizabeth](#); [Amon, Dan](#); [Ankley, Gerald](#); [Aunkst, Dana](#); [Avila, Aaron](#); [Badalamente, Mark](#); [Ballotti, Doug](#); [Barber, Delores](#); [Barmakian, Nancy](#); [Barnet, Henry](#); [Barolo, Mark](#); ["Barr, Pamela"](#); [Battin, Andrew](#); [Behl, Betsy](#); [Benjamin-Sirmons, Denise](#); ["Bergstrand, Paul"](#); ["Best-Wong, Benita"](#); [Binder, Bruce](#); [Birnbaum, Rona](#); [Biro, Susan](#); [Blake, Wendy](#); [Blancato, Jerry](#); [Blevins, John](#); [Bloom, David](#); [Boddu, Veera](#); [Bohan, Suzanne](#); [Bonanno, Gale](#); [Bourbon, John](#); [Breen, Barry](#); [Brennan, Thomas](#); [Brincks, Mike](#); [Briskin, Jeanne](#); [Buckley, Timothy](#); [Buhl, Rick](#); [Bunker, Byron](#); [Burneson, Eric](#); [Busterud, Gretchen](#); [Campbell, Jennie](#); [Canzler, Erica](#); [Caro, Vique](#); [Carpenter, Wesley](#); [Cascio, Wayne](#); [Charmley, William](#); [Cherry, Katrina](#); [Chu, Ed](#); [Clanton, Michael](#); [Clark, Becki](#); [Coleman, Charlotte](#); [Conklin, Jeanne](#); [Coogan, Daniel](#); [Coughlin, Christine](#); [Cozad, David](#); [Crossland, Andy](#); [Crossland, Ronnie](#); [Dalbey, Matthew](#); [Daly, Carl](#); [Dawes, Katherine](#); [Dawson, Jeffrey](#); [DeLeon, Rafael](#); [Diaz-Sanchez, David](#); [Dierker, Carl](#); [Dombrowski, John](#); [Dorka, Lilian](#); [Douchand, Larry](#); [Drake, Kerry](#); [Dufour, Alfred](#); [Dunham, Sarah](#); [Dutton, Steven](#); [Echeverria, Marietta](#); [Edwards, Jonathan](#); [Epley, Brian](#); [Epp, Timothy](#); [Esher, Diana](#); [Eubanks, Kristy](#); [Evangelista, Pat](#); [Fernandez, Cristina](#); [Fine, Steven](#); [Fisher, Bill](#); [Fong, Tera](#); [Frazier, Brian](#); [Freeman, Caroline](#); [Fugh, Justina](#); [Garcia, David](#); [Garland, Jay](#); [George, Elizabeth](#); [Gettle, Jeaneanne](#); [Gillespie, Andrew](#); [Gilliland, Alice](#); [Goodin, John](#); [Goodis, Michael](#); [Goss Eng, Alison](#); [Grantham, Nancy](#); [Gray, Linda](#); [Gray, Richard](#); [Greene, Mary](#); [Grifo, Francesca](#); [Grundler, Christopher](#); [Guerrero, Carmen](#); [Guilaram, Yu-Ting](#); [Guiseppe-Elie, Annette](#); [Gullett, Brian](#); [Gunning, Paul](#); [Gutierrez, Sally](#); [Gwinn, Maureen](#); [Hagler, Gayle](#); [Hamian, Lynne](#); [Hamlin, Tim](#); [Harris, Michael](#); [Hart, Debbi](#); [Hartman, Mark](#); [Haugen, David](#); [Helm, Arron](#); [Hengst, Benjamin](#); [Henry, Tala](#); [Hill, Randy](#); [Hisel-Mccoy, Sara](#); [Hitchens, Lynnnann](#); [Hoff, Dale](#); [Holt, Kay](#); [Hoskinson, Carolyn](#); [Hubbell, Bryan](#); [Huffman, Diane](#); [Hughes, Hayley](#); [Humphrey, Leslie](#); [Hunt, JuanCarlos](#); [Iglesias, Ariel](#); [Jackson, Yvette](#); [Jernberg, Jorianne](#); [Johnson, Arthur](#); [Jones, Samantha](#); [Jones-Peeler, Meshell](#); [Jordan, Deborah](#); [Judson, Richard](#); [Kaczmarek, Chris](#); [Kadeli, Lek](#); [Kamen, Mara](#); [Kaplan, Robert](#); [Kasman, Mark](#); [Keeley, Ann](#); [Keigwin, Richard](#); [Kelley, Rosemarie](#); [Kemker, Carol](#); [Kenny, Shannon](#); [Kloss, Christopher](#); [Knudsen, Thomas](#); [Koerber, Mike](#); [Korleski, Christopher](#); [Koslow, Karin](#); [Kowalski, Edward](#); [LaPosta, Dore](#); [Lassiter, Penny](#); [Lattimore, Craig](#); [Laureano, Javier](#); [Layne, Arnold](#); [Le, Madison](#); [Lee, Charles](#); [Legare, Pamela](#); [Leonard, Paul](#); [Li, Beverly](#); [Libertz, Catherine](#); ["lindsay.nancy@epa.gov"](#); [Lloyd, David](#); [Lowery, Brgid](#); [Lowit, Anna](#); [Lupinacci, Jean](#); [Lynch, Mary-Kay](#); [Mackey, Cyndy](#); [Maguire, Charles](#); [Maher, Karen](#); [Manning, Tonya](#); [Martian, Stefan](#); [Mathias, Scott](#); [Mathur, Rohit](#); [Matuszko, Jan](#); [May, Benjamin](#); [Mazakas, Pam](#); [McCluney, Lance](#); [McDonald, James](#); [McGartland, Al](#); [McGuire, Karen](#); [McGuire, James](#); [McLain, Jennifer L.](#); [McManus, Catharine](#); [Melvin, Karen](#); [Messina, Edward](#); [Miller, Anthony](#); [Miller, Wynne](#); [Miller, Amy](#); [Monell, Carol](#); [Mooney, John](#); [Moraff, Kenneth](#); [Mosby, Jackie](#); [Mottley, Tanya](#); [Mugdan, Walter](#); [Munns, Wayne](#); [Myrick, Pamela](#); [Nagle, Deborah](#); [Nam, Ed](#); ["nesci.kimberly@epa.gov"](#); [Neugeboren, Steven](#); [Newton, Cheryl](#); [Nguyen, Duch](#); [Nichols, Tonya](#); [Nickerson, William](#); [Nicolosi, Laura](#); [Noga, Vaughn](#); [OBrien, Kathy](#); [O'Connor, Darcy](#); [Ohanian, Edward](#); [Olson, Bryan](#); [Opalski, Dan](#); [Osinski, Michael](#); [Pace, Donald](#); [Packard, Elise](#); [Palmer, Leif](#); [Patlewicz, Grace](#); [Patrick, Kimberly](#); [Payne, James \(Jim\)](#); [Pease, Anita](#); [Perez, Marc](#); [Peterson, Mary](#); [Pirzadeh, Michelle](#); [Pollins, Mark](#); [Price-Fay, Michelle](#); [Quast, Sylvia](#); [Reaves, Elissa](#); [Reed, Khesha](#); [Richardson, RobinH](#); [Roache, Brendan](#); [Robbins, Chris](#); [Robichaud, Jeffery](#); [Rodan, Bruce](#); [Rodrigues, Cecil](#); [Ross, Mary](#); [Rowson, David](#); [Ruvo, Richard](#); [Salver, Kathleen](#); [Sams, Reeder](#); [Sanders, Amy](#); [Sasser, Erika](#); [Sasseville, Sonya](#); [Sawyers, Andrew](#); [Sayles, Gregory](#); [Schefski, Kenneth \(KC\)](#); [Scheraga, Joel](#); [Schmidt, Lorie](#); [Scott, Jeff](#); [Scozzafava, MichaelE](#); [Seager, Cheryl](#); [Serassio, Helen](#); [Shah, Imran](#); [Shapiro, Andy](#); [Shaw, Betsy](#); [Sheehan, Charles](#); [Shields, Edward](#); [Simon, Harvey](#); [Simon, Karl](#); [Simon, Nigel](#); [Singh, Amar V.](#); [Singleton, DeAndre](#); [Skelley, Dana](#); [Smidinger, Betsy](#); [Smith, Mark A.](#); [Smith, Charles](#); [Speth, Thomas](#); [Srinivasan, Gautam](#); [Stalcup, Dana](#); [Stanich, Ted](#); [Starfield, Lawrence](#); [Steenbock, John](#); [Stein, Kathie](#); [Stein, Raffael](#); [Strong, Jamie](#); [Szaro, Deb](#); [Talbert-Duarte, Angelia](#); [Tapia, Cecilia](#); [Tapp, Joshua](#); [Taylor, Jessica](#); [Tejada, Matthew](#); [Tellis, Vickie](#); [Terada, Calvin](#); [Terris, Carol](#); [Thayer, Kris](#); [Thomas, Deb](#); [Thomas, Russell](#); [Thompkins, Anita](#); [Thornhill, Alan](#); [Tomiak, Robert](#); [Torres, Tomas](#); [Trimble, Katherine](#); [Tsigotis, Peter](#); [Updike, David](#); [VanDrunick, Suzanne](#); [Veal, Lee](#); [Viswanathan, Krishna](#); [Vogel, Dana](#); [Wall, Tom](#); [Walsh, Ed](#); [Watkins, Tim](#); [Wayland, Richard](#); [Weber, Rebecca](#); [Wells, Jeffrey](#); [Wells, Krysti](#); [Werner, Jacqueline](#); [Whung, Pai-Yei](#); [Widawsky, David](#); [Williams, Antony](#); [Williams, Maria](#); [Williamson, Anahita](#); [Wood, Anna](#); [Wood, Robert](#); [Wooden-Aguilar, Helena](#); [Wright, Stephanie L.](#); ["wyatt.marc@epa.gov"](#); [Zapata, Cesar](#); [Zartarian, Valerie](#); [Zepp, Richard](#)

Subject:

News about your upcoming financial disclosure filing requirement

Date:

Sunday, January 23, 2022 9:06:00 PM

Attachments:[Advisory to all 278 filers about filing fee.pdf](#)[When to Report Transactions on the OGE 278 and Part 7 - November 2020.docx](#)

Hi there,

As you are undoubtedly – and perhaps even painfully -- aware, you are in a position (either acting or permanently) that requires you to file the public financial disclosure report (also known as the 278). This year, we will be assigning your incumbent reports to you *in late February*, so not as early as in previous years. Your due date will be May 16 (because 5/15 is a Sunday), and the reporting period for your incumbent report will be CY 2021 only. But, hey, since I have your attention, allow me to share some important reminders about 278s:

- *Did you know?* EPA was among the first federal agencies to adopt INTEGRITY, the electronic financial disclosure filing system. We've been using it since 2015. Government-wide, there are now more than 35,000 users of this system. At EPA, we typically have more than 250

public filers at any time.

-
- *Remember about periodic transaction reporting!* You are required to report any transactions of stocks or bonds more than \$1000 within 30 days after receiving notice but not later than 45 days after the trade itself. Do so by filing a 278T in INTEGRITY. If you are late, then you are subject to an automatic late filing fee of \$200 for missing the deadline. Attached is our reminder about late filing fees as well as a chart about transaction reporting. Alas, last year, we had to fine more than half a dozen people for late transaction filings.
- *Whom should you contact with questions?* Four of us in OGC/Ethics review 278s, so here's the list of contacts for you:

OGC/Ethics	ORGANIZATIONS
Victoria Clarke	OIG, OGC, OMS, OW, Regions 3 and 4
Justina Fugh	AO, OCFO, OITA and Regions 8, 9 and 10
Shannon Griffo	OAR, OCSP, OECA and Regions 1 and 2
Ferne Mosley	OLEM, ORD and Regions 5, 6 and 7

Thanks for your attention to ethics issues, and we know you're eagerly anticipating the start of the public financial disclosure reporting season later in February!

Cheers,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Timely Filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: David Cozad *David Cozad* 8/29/19
Acting Designated Agency Ethics Official

TO: All EPA Public Financial Disclosure Report Filers

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app., to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position (either permanently or for more than 60 days on detail), you are required by this statute to file the public financial disclosure report. As executive branch employees, we are all bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations.

This memorandum formally reminds you that you are required by law to timely and accurately file your Public Financial Disclosure Reports (OGE 278e)¹ and Periodic Transaction Reports (OGE 278-Ts).² Failure to file timely will result in a **\$200 late filing fee** unless you formally request and receive a waiver of the late fee from the Designated Agency Ethics Official (DAEO) or Alternate Designated Agency Ethics Official (ADAEO).³ Unpaid late fees are subject to the Agency's⁴ and the government's debt collection procedures.

In addition to filing timely, you must also file a complete and accurate report. Should OGC/Ethics contact you for any additional required information, you will have no more than **30 days** to update your report. For guidance on how to file an accurate report, please refer to the Public Financial Disclosure Guide or contact OGC/Ethics at ethics@epa.gov.

¹ See 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.

² Pub. L. 112-105 § 11 (STOCK Act).

³ See 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).

⁴ See Resource Management Directive System 2540-03-P2 dated 07/12/2016.

Please refer to this chart for your filing obligations:

OGE 278e - New Entrant reports	Within 30 days of entering a covered position (either by appointment to a permanent or acting in covered position)
OGE 278e – Incumbent reports	No later than May 15
OGE 278e – Termination reports	No later than 30 days after leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination)
OGE 278T – Periodic transaction reports ⁵	The earlier of 30 days after learning of a transaction or 45 days of the transaction taking place.

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date**. Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. See 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov, to the attention of the DAEO and ADAEO, describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not “extraordinary” circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

You are required by law to comply with these financial reporting obligations. Your colleagues in OGC/Ethics are available to provide assistance, but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is \$56,216.⁶

As public servants, we know that you take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278T*

cc: Justina Fugh, Alternate Designated Agency Ethics Official

⁵ See attached guidance – *When to Report Transactions on the OGE 278 and OGE 278T*.

⁶ In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of \$15,000 and still had to file the termination report.

When to Report Transactions

FILING DEADLINE : 30 days from notification or 45 days from transaction *whichever is earlier*

A \$200 late filing fee penalty is assessed for each late periodic reporting period¹

	Periodic Transaction Report	Annual and/or Termination Report
Investment Assets	Report on the OGE 278-T?	Report on Part 7 of the OGE 278e?
Transactions of \$1,000 or less		
• Any asset in which the transaction amount is \$1,000 or less regardless of the type of asset or who owns the asset	No	No
Investment assets held by you, your spouse, or jointly held		
• Stocks or stock options	Yes	Yes
• Corporate or municipal bonds (exclude U.S. Treasury securities)	Yes	Yes
• Commodity futures	Yes	Yes
• Other investment securities	Yes	Yes
• Assets listed above in your individual, joint, or spousal brokerage accounts managed accounts, IRAs, other retirement accounts, and/or other investment vehicles	Yes	Yes
Your dependent child's investment assets		
• Stocks	Yes	Yes
• Corporate or municipal bonds (exclude U.S. Treasury securities)	Yes	Yes
• commodity futures	Yes	Yes
• other investment securities	Yes	Yes
• Assets listed above in dependent child's <u>own</u> or UGMA brokerage account, IRAs, and/or other investment vehicles	Yes	Yes
Other investment assets irrespective of ownership		
• Real Property	No	Yes ²
• Mutual funds, exchange traded funds, 529 plans, index funds, and/or other "excepted investment funds" ³	No	Yes
• Any asset in which the transaction amount is \$1,000 or less	No	No
• Cash accounts (deposits and/or withdrawals) or certificates of deposit	No	No
• Money market accounts and mutual funds	No	No
• US Treasury securities (e.g., T bills, Treasury bonds, savings bonds)	No	No
• Federal government retirement accounts (e.g., Thrift Savings Plan)	No	No
• Life insurance and annuities	No	No
• Collectibles	No	No
• Assets held within an excepted trust ⁴	No	No
• Transfer of assets between you, your spouse, and your dependent children	No	No

Last updated November 2020

¹ This late fee is automatically imposed by law and is non-negotiable. You may request a waiver of any late filing fee from the Designated Agency Ethics Official or the Alternate DAEO if there are extraordinary circumstances. A fee waiver is at the sole discretion of the DAEO/ADAEO and is not subject to appeal. A filer who has unpaid late fees will be referred to the appropriate federal office or agency for debt collection procedures.

² Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

³ To be an excepted investment fund (EIF), the asset must be:

- (a) widely held (more than 100 participants),
- (b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
- (c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

⁴ OGC/Ethics must determine that your trust qualifies as an “excepted trust.” For help, email ethics@epa.gov.

From: [Briskin, Jeanne](#)
To: [Griffo, Shannon](#)
Subject: RE: Financial Disclosure Report - Cautionary Guidance
Date: Thursday, June 2, 2022 12:10:33 PM

Thank you. Advice received.

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, June 2, 2022 12:10 PM
To: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Subject: Financial Disclosure Report - Cautionary Guidance

Hi Jeanne,

Now that I've finished my review of your OGE-278, I'm sending you our standard cautionary guidance (similar to the one from last year) noting that you reported owning certain interests that may possibly be affected by the performance of your official duties. These assets appear to be over the regulatory thresholds, so we are sending you this cautionary letter to remind you to take appropriate steps to ensure that you do not have a conflict of interest. We are not concluding that you currently have a conflict of interest; rather, you should read the information below and contact an ethics official if you have any questions. Remember, it is your obligation to ensure that your private interests (including your assets) do not conflict with your public duties. Be vigilant!

YOUR FINANCIAL INTERESTS OF CONCERN

As part of your official duties, you can't work with any of the companies listed below and, given your ownership levels in them and two sector funds, you also can't work on any matters of general applicability that affect their sectors. For example, you own stock in a lot of health care companies and you also have a couple of healthcare based sector funds. Based on your financial conflicts of interest, you cannot work on rulemaking, for example, that is directed at any part of the health care sector. If your office were to look into the health effects of baby formula over breast feeding, you would not be able to participate. If you wanted to examine the environmental health effects of opioids, then you could not participate (even though Abbvie does not manufacture opioids, Johnson and Johnson and Pfizer do).

ASSET	SECTOR	SUBINDUSTRY	YOUR RECUSAL OBLIGATIONS GIVEN AMOUNT OWNED You cannot work on:
(b) (6), (b) (3) (A)	[REDACTED]	[REDACTED]	Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)	[REDACTED]	[REDACTED]	Specific party matters AND

(b) (6), (b) (3) (A)			matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters. Possibly matters of general applicability for sector, subindustries listed if ownership interest is over \$25K.
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters. Possibly matters of general applicability for utilities if ownership interest is over \$25K.
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters AND

(b) (6), (b) (3) (A)			matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Specific party matters AND matters of general applicability for sector, subindustries listed
(b) (6), (b) (3) (A)			Matters of general applicability for sector, subindustries listed

Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. You can still participate if you own less than the levels below:

SPECIFIC PARTY MATTER	MATTER OF GENERAL APPLICABILITY
e.g., an enforcement action against ABC Widget Company	e.g., working on a rulemaking that affects all widget manufacturers
≤\$15,000 in ABC Widget Co. itself	≤\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.)
≤\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)	≤\$50,000 aggregate in all affected parties (all widget makers)

***Don't forget that you have to add together your own ownership interest and any imputed interest. AND you also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

EXAMPLE: Your father-in-law passed away recently and bequeathed to your spouse shares in an oil and gas company worth \$30,000. You can't work on a specific party matter involving that company and also now can't work on any rulemaking that affects all oil and gas companies.

-

Why Do We Raise Concerns?

A criminal statute, 18 U.S.C. §208(a), bars you from participating in any "particular matter" that affects any of your own interests or any imputed interest (e.g., spouse or dependent children). Your interests include not only ownership interests (e.g., stock, bonds, mutual funds) but also the

interests of outside entities (e.g., any organization in which you are serving as an officer, director, or trustee) and prospective employers (any entity with which you are seeking future employment). So you can't participate in any particular matter that will have a direct and predictable effect on your financial interest.

The important point to remember here is that 18 U.S.C. §208(a) is a criminal statute. A knowing violation of this statute can result in criminal prosecution and penalties. It's important to understand the elements of the financial conflict of interest statute. You have to participate "personally and substantially" in a "particular matter" in order for there to be a conflict of interest, and there has to be a "direct and predictable" effect on your financial interests.

What is a particular matter?

A "particular matter" involves any deliberation, decision or action and that is focused on the interests of specific persons/organizations or any identifiable class of persons. It includes "specific party" matters (e.g., contracts, grants, assistance agreements, lawsuits, enforcement action, permits, licenses, audits) and matters of "general applicability" (e.g., rulemaking or policy matters) that distinctively affect a particular industry or identifiable class of persons.

What is "personal and substantial" participation?

Personal participation means that you were personally involved in the matter or that you directed or controlled a subordinate's participation. *Substantial participation* means that your involvement in the matter was of significance, which includes decision-making, review or recommendation as to an action being taken, signing or approving a final document, and/or participating in a final decision briefing.

What is a "direct and predictable" effect on a financial interest?

The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.

What to do if you're worried about a conflict

If you are concerned that you have a conflict, contact OGC/Ethics immediately. We will go over the available options for you. Typically, potential conflict of interests are resolved in one of the following ways:

- 1) Don't participate. This means that you do not participate in the matter at all, including attending meetings, receiving briefings or being copied on substantive documents. We recommend that you document your recusal in writing, with a copy to OGC/Ethics.
- 2) Divest entirely or get below the regulatory threshold. You can either sell outright on your own or, if the sale will result in a tax liability for capital gains, then you may instead contact OGC/Ethics for a "Certificate of Divestiture" before you sell. This will enable you to defer capital gains tax, but you have to ask OGC/Ethics for assistance before you divest.
- 3) Ask for a waiver. Only the Agency's Designated Agency Ethics Official (DAEO) in OGC is authorized to waive the prohibition of 18 U.S.C. §208(a) where the interest is "not so substantial as to be deemed likely to affect the integrity of services which the Government may expect." OGC must consult with another federal agency before issuing a waiver, which are rarely granted.

* * * * *

If you need more information or advice, feel free to contact me or OGC/Ethics at ethics@epa.gov .
We will be happy to assist you.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: [Griffo, Shannon](#)
To: [Briskin, Jeanne](#)
Subject: RE: Follow-up from OGC/Ethics on your public financial disclosure report
Date: Thursday, June 2, 2022 11:10:00 AM

Ah okay. I remember our email exchange about this. So nothing needs to be done about those funds. Thanks for clarifying!

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061

From: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Sent: Thursday, June 2, 2022 11:04 AM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Follow-up from OGC/Ethics on your public financial disclosure report

Thanks Shannon

The sales happened and were properly reported in the previous year. But I forgot to delete them as holdings from last year's final report. So they erroneously showed up as being in our portfolio this year.

I sent a note about this to Ethics@epa.gov without naming the particular items.

Does that help?

Jeanne

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, June 2, 2022 11:01 AM
To: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Subject: Follow-up from OGC/Ethics on your public financial disclosure report

Hi Jeanne,

I reviewed your Annual Report and just had two follow-up comments:

1. For your (b) (6) [REDACTED]
[REDACTED] You actually don't need to give an exact amount. So I'm going to delete the income amounts for those two to avoid overreporting.
2. I noticed (b) (6) [REDACTED]

(b) (6)

Remember that you need to report any purchases, sales, or exchanges of securities (e.g., stocks, mutual funds etc.) that occurred during the reporting period if the amount of the transaction was more than \$1,000. Were these sales that would need to be reported in Part 7? If so, you could tell me the dates and amounts and I can add them, or I can send the report back to you.

Once we get that squared away, I should be able to get your report certified. And I'll also send you our standard cautionary guidance for your holdings above the regulatory exemption levels.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061

From: [Griffo, Shannon](#)
To: [Fugh, Justina](#)
Subject: FW: Follow-up from OGC/Ethics
Date: Thursday, February 20, 2020 12:47:00 PM

Here's how things ended up with Jeanne B. and PFAS -
Shannon Griffo
Ethics Attorney
Office of General Counsel, Ethics
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Sent: Thursday, February 20, 2020 12:26 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: Re: Follow-up from OGC/Ethics

Thanks very much for this clear, helpful and prompt information. It's helpful so that I know I don't need to recuse my self from PFAS issues that meet the criteria you spelled out. (And to ask for guidance if any specific issues that you outlined arise.)
Jeanne

On Feb 20, 2020, at 12:17 PM, Griffo, Shannon <Griffo.Shannon@epa.gov> wrote:

Hi Jeanne,

As promised, I'm following up on our discussion from last week about whether you have a conflict of interest with your office's PFAS work and your financial interests. We've carefully considered your description of the PFAS work, and determined that these are not particular matters of general applicability. Thus, there does not appear to be a financial conflict of interest at this time. And here's how we got there - You'll recall that a criminal statute, 18 U.S.C. §208(a), bars you from participating in any "particular matter" that affects any of your own interests or any imputed interest. So you can't participate in any particular matter that will have a direct and predictable effect on your financial interest. A "particular matter" involves any deliberation, decision or action and that is focused on the interests of specific persons/organizations or any identifiable class of persons. It includes "specific party" matters (e.g., contracts, grants, assistance agreements, lawsuits, enforcement action, permits, licenses, audits) and matters of "general applicability" (e.g., rulemaking or policy matters) that distinctively affect a particular industry or identifiable class of persons.

PFOA and PFOS are used in a variety of industries, and releases have been found in facilities of many different kinds across the country. Multiple industry sectors that manufacture products containing PFAS could be implicated by a potential Agency action or determination related to these chemicals. Therefore, we've determined that generally speaking, PFAS is not itself a "particular matter." Similarly, any such research/risk assessments/workgroups related to these chemicals and their impacts on children's health would not be considered particular matters of general applicability. So for these PFAS-related matters you've described, we've determined that your financial interests would not be affected by the performance of your official duties and you could work on these matters.

But remember that if there is a PFAS rulemaking or Agency determination/policy that affects your financial interest(s) *individually or as a member of a discrete and identifiable class (individual sector)*, then there is a potential financial conflict of interest and you should consult with OGC/Ethics about the appropriate remedy (e.g. recusal, divestiture).

Please let me know if you have any other questions.

Thanks!

Shannon

Shannon Griffo

Ethics Attorney

Office of General Counsel, Ethics

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: Griffo, Shannon

Sent: Thursday, February 13, 2020 7:33 AM

To: Briskin, Jeanne <Briskin.Jeanne@epa.gov>

Subject: Follow-up from OGC/Ethics

Hi Jeanne,

Justina asked that I follow-up with you regarding your financial holdings and PFAS work. To determine whether there is a potential conflict and discuss next steps, I'd like to learn more about the PFAS matters that you'd be working on in your office to determine whether these are actually particular matters of general applicability (or specific party matter or broader "matters"). For example, are these PFAS rulemakings that affect the company you own over the regulatory threshold individually or as a member of a discrete and identifiable class (individual sector)? Or are these broader policy PFAS matters/decisions?

Do you have time to chat today? If so, give me a ring at your convenience or we can set up a time. I'll be out tomorrow, but back in Tuesday.

Thanks,

Shannon

Shannon Griffo

Ethics Attorney

Office of General Counsel, Ethics

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: [Griffo, Shannon](#)
To: [Briskin, Jeanne](#)
Subject: RE: Follow-up from OGC/Ethics
Date: Thursday, February 13, 2020 1:24:00 PM

No worries. Just call whenever you're free. I have a meeting at 2:00 though.

Shannon Griffo
Ethics Attorney
Office of General Counsel, Ethics
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Briskin, Jeanne <Briskin.Jeanne@epa.gov>

Sent: Thursday, February 13, 2020 1:20 PM

To: Griffo, Shannon <Griffo.Shannon@epa.gov>

Subject: Re: Follow-up from OGC/Ethics

I may be five minutes late. Why don't I call you? Thank you thank you
Jeanne

On Feb 13, 2020, at 11:29 AM, Griffo, Shannon <Griffo.Shannon@epa.gov> wrote:

Sounds good. I'll give you a call at 1:30.

Shannon Griffo
Ethics Attorney
Office of General Counsel, Ethics
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Briskin, Jeanne <Briskin.Jeanne@epa.gov>

Sent: Thursday, February 13, 2020 9:14 AM

To: Griffo, Shannon <Griffo.Shannon@epa.gov>

Subject: RE: Follow-up from OGC/Ethics

Thanks Shannon! How about 1:30 pm today?

I'm at 202 564-4583

Jeanne

Jeanne Briskin

Director, Office of Children's Health Protection

U.S. Environmental Protection Agency

(202) 564-4583

<http://www.epa.gov/children>

<https://www.epa.gov/schools>

<https://www.epa.gov/aboutepa/about-office-childrens-health-protection-ochp>

From: Griffo, Shannon <Griffo.Shannon@epa.gov>

Sent: Thursday, February 13, 2020 7:33 AM

To: Briskin, Jeanne <Briskin.Jeanne@epa.gov>

Subject: Follow-up from OGC/Ethics

Hi Jeanne,

Justina asked that I follow-up with you regarding your financial holdings and PFAS work. To determine whether there is a potential conflict and discuss next steps, I'd like to learn more about the PFAS matters that you'd be working on in your office to determine whether these are actually particular matters of general applicability (or specific party matter or broader "matters"). For example, are these PFAS rulemakings that affect the company you own over the regulatory threshold individually or as a member of a discrete and identifiable class (individual sector)? Or are these broader policy PFAS matters/decisions?

Do you have time to chat today? If so, give me a ring at your convenience or we can set up a time. I'll be out tomorrow, but back in Tuesday.

Thanks,

Shannon

Shannon Griffo

Ethics Attorney

Office of General Counsel, Ethics

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: [Fugh, Justina](#)
To: [Briskin, Jeanne](#); [ethics](#)
Subject: RE: Oge278 annual report
Date: Monday, January 20, 2020 10:38:00 PM

Correct. We have not yet assigned the annual report to anyone yet.

-----Original Message-----

From: Briskin, Jeanne
Sent: Monday, January 20, 2020 12:32 PM
To: ethics <ethics@epa.gov>
Subject: Oge278 annual report

Had some time and tried to start my OGE 278 annual report. Didn't see any links to pull up new report other than transaction report. Confirming the annual form is not yet available to do?

Thx.

Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. You can still participate if you own less than the levels below:

SPECIFIC PARTY MATTER	MATTER OF GENERAL APPLICABILITY
e.g., an enforcement action against ABC Widget Company	e.g., working on a rulemaking that affects all widget manufacturers
≤\$15,000 in ABC Widget Co. or in aggregate for companies in this same sector	≤\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.)
≤\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)	≤\$50,000 aggregate in all affected parties (all widget makers)

Don't forget that you have to add together your own ownership interest and any imputed interest. You also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

EXAMPLE: Your father-in-law passed away recently and bequeathed to your spouse shares in an oil and gas company worth \$30,000. You can't work on a specific party matter involving that company and also now can't work on any rulemaking that affects all oil and gas companies.

Why Do We Raise Concerns?

A criminal statute, 18 U.S.C. §208(a), bars you from participating in any "particular matter" that affects any of your own interests or any imputed interest (e.g., spouse or dependent children). Your interests include not only ownership interests (e.g., stock, bonds, mutual funds) but also the interests of outside entities (e.g., any organization in which you are serving as an officer, director, or trustee) and prospective employers (any entity with which you are seeking future employment). So you can't participate in any particular matter that will have a direct and predictable effect on your financial interest.

The important point to remember here is that 18 U.S.C. §208(a) is a criminal statute. A knowing violation of this statute can result in criminal prosecution and penalties. It's important to understand the elements of the financial conflict of interest statute. You have to participate "personally and substantially" in a "particular matter" in order for there to be a conflict of interest, and there has to be a "direct and predictable" effect on your financial interests.

What is a particular matter?

A "particular matter" involves any deliberation, decision or action and that is focused on the interests of specific persons/organizations or any identifiable class of persons. It includes "specific party" matters (e.g., contracts, grants, assistance agreements, lawsuits, enforcement action, permits, licenses, audits) and matters of "general applicability" (e.g., rulemaking or policy matters) that distinctively affect a particular industry or identifiable class of persons.

What is "personal and substantial" participation?

Personal participation means that you were personally involved in the matter or that you directed or controlled a subordinate's participation. *Substantial participation* means that your involvement in the matter was of significance, which includes decision-making, review or recommendation as to an action being taken, signing or approving a final document, and/or participating in a final decision briefing.

What is a "direct and predictable" effect on a financial interest?

The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.

What to do if you're worried about a conflict

Typically, potential conflict of interests are resolved in one of the following ways:

- 1) Don't participate. This means that you do not participate in the matter at all, including attending meetings, receiving briefings or being copied on substantive documents. We recommend that you document your recusal in writing, with a copy to OGC/Ethics.
- 2) Divest entirely or get below the regulatory threshold. If the sale will result in a tax liability for capital gains, then contact OGC/Ethics for a "Certificate of Divestiture" before you sell. This will enable you to defer capital gains tax, but you need to get a document from the Office of Government Ethics before you divest.
- 3) Ask for a waiver. Only the Agency's Designated Agency Ethics Official (DAEO) in OGC is authorized to waive the prohibition of 18 U.S.C. §208(a) where the interest is "not so substantial as to be deemed likely to affect the integrity of services which the Government may expect." OGC must consult with another federal agency before issuing waivers, which are rarely granted.

Hopes this helps get you thinking...

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Briskin, Jeanne
Sent: Wednesday, May 01, 2019 2:08 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: portfolio review please

Hi Justina,

As I mentioned earlier, I expect to be reassigned to a different SES job. I can confidentially share with you that the position I have been told I would go to is the director of the Office of Children's Health. I have been asked to not share that destination with others (Wendy and Elise know, but not my team.)

I recently submitted my OGC 278 for 2018, so you have the most recent and accurate information about my holdings.

Could you or someone on your team let me know whether I would face any potential recusals or need to divest if I am ultimately moved to that position?

Thanks very much,

Jeanne

Jeanne Briskin

Director, Conflict Prevention and Resolution Center

Dispute Resolution Specialist

U.S. Environmental Protection Agency

“Making Agreement Easier” | (202) 564-4583

<http://intranet.epa.gov/adr/>or <http://www.epa.gov/adr>

Watch this [3 minute video](#) to learn more about mediation and facilitation at EPA



From: [Griffo, Shannon](#)
To: [Briskin, Jeanne](#)
Subject: RE: Question re Oge 278
Date: Monday, May 16, 2022 12:03:00 PM

Hi Jeanne,

So it was a fund that you sold in 2020, and accidentally included on last year's Annual Report (filed in 2021)? If so, there's nothing we need to do now. Once a report is certified, we can't go back to the old report. I'm guessing you noticed it because you went to delete it on this year's Annual Report? If it's no longer on this year's report, there's really nothing to do. Sometimes someone may forget to include a fund, and we'd enter an endnote saying "inadvertent oversight that the fund was not previously reported." But that wouldn't be the case here since it's deleted. I appreciate you bringing it to my attention now though!

Also, Justina sent me your recent 278-T and your late fee waiver request. She's recused herself from the request, which means Jim Payne (as DAEO) will have to make the determination on the fee waiver. I'm waiting to hear back from him. Once I do, I'll circle back.

And when I've had a chance to take a closer look at your Annual Report, I'll let you know if I have any questions.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061

-----Original Message-----

From: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Sent: Friday, May 13, 2022 8:51 PM
To: ethics <ethics@epa.gov>
Subject: Question re Oge 278

I found an accidental error in last year's (2021) annual report. I properly and timely reported a sale in a transaction report but missed removing the fund in the annual report.

How can I correct my accidental mistake?

Thank you

Sent from my iPhone

From: [Briskin, Jeanne](#)
To: [Mosley, Ferne](#)
Cc: [Fugh, Justina](#)
Subject: RE: request for waiver: Late transaction reporting
Date: Thursday, May 28, 2020 12:16:47 PM
Attachments: [image001.png](#)
[image002.png](#)

Sounds good. Thanks again!

From: Mosley, Ferne
Sent: Thursday, May 28, 2020 12:14 PM
To: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: request for waiver: Late transaction reporting
No, that's ok. I was just reminding you of the disqualification requirements since you purchased new stocks.
Ferne

Ferne L. Mosley, Attorney-Advisor

Ethics Office – Office of General Counsel
U.S. Environmental Protection Agency
William Jefferson Clinton Building – North, Room 4413A
Washington, DC 20460 (for ground deliveries: 20004)
Mail Code 2311A
Desk phone: (202) 564-8046
Cell phone: (202) 306-2998

From: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Sent: Thursday, May 28, 2020 12:11 PM
To: Mosley, Ferne <mosley.ferne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: request for waiver: Late transaction reporting
Thank you Ferne. I have an additional, earlier email determining that I did not need to divest of certain stock on a particular issue. Shall I send you a copy of that for your records?
Jeanne

From: Mosley, Ferne
Sent: Thursday, May 28, 2020 12:09 PM
To: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: request for waiver: Late transaction reporting
Jeanne, I've certified your reports. Please see the separate email guidance I sent to you regarding the financial conflict of interest law and disqualification requirements relating to your stock interests.
Sincerely, Ferne

Ferne L. Mosley, Attorney-Advisor

Ethics Office – Office of General Counsel
U.S. Environmental Protection Agency
William Jefferson Clinton Building – North, Room 4413A
Washington, DC 20460 (for ground deliveries: 20004)
Mail Code 2311A
Desk phone: (202) 564-8046
Cell phone: (202) 306-2998

From: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Sent: Thursday, May 28, 2020 11:45 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Mosley, Ferne <mosley.ferne@epa.gov>
Subject: RE: request for waiver: Late transaction reporting
Thanks very much. I appreciate it.

From: Fugh, Justina
Sent: Thursday, May 28, 2020 11:34 AM
To: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Cc: Mosley, Ferne <mosley.ferne@epa.gov>
Subject: RE: request for waiver: Late transaction reporting

Hi Jeanne,

Since you've taken steps to remedy the situation from recurring, and this is your first oops, I'll grant the waiver of the cumulated late fees. We are seriously cracking down these days! Hope you are all doing well these days!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal

From: Briskin, Jeanne <Briskin.Jeanne@epa.gov>

Sent: Wednesday, May 27, 2020 6:08 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: request for waiver: Late transaction reporting

Dear Justina,

I humbly request a waiver of the late fees for transaction reporting for the OGE 278T and on my annual report.

Regarding the (b) (6), (b) (3) (A)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thank you for your consideration of my request.

Best,

Jeanne

From: Mosley, Ferne

Sent: Wednesday, May 27, 2020 4:08 PM

To: Briskin, Jeanne <Briskin.Jeanne@epa.gov>

Cc: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: RE: Late transaction reporting

OK, thank you, I'll make the edit for the (b) (6)

Ferne

Ferne L. Mosley, Attorney-Advisor

Ethics Office – Office of General Counsel

U.S. Environmental Protection Agency

William Jefferson Clinton Building – North, Room 4413A

Washington, DC 20460 (for ground deliveries: 20004)

Mail Code 2311A

Desk phone: (202) 564-8046

Cell phone: (202) 306-2998

From: Briskin, Jeanne <Briskin.Jeanne@epa.gov>

Sent: Wednesday, May 27, 2020 4:04 PM

To: Mosley, Ferne <mosley.ferne@epa.gov>

Cc: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: RE: Late transaction reporting

I will write to Justina with an explanation by the deadline.

FYI, I see that the (b) (6) [REDACTED] . I do my best to QA my submittal, but this slipped by.

From: Mosley, Ferne

Sent: Wednesday, May 27, 2020 4:01 PM

To: Briskin, Jeanne <Briskin.Jeanne@epa.gov>

Cc: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: Late transaction reporting

Importance: High

Hello, Jeanne – I'm reviewing your 2020 annual report that was filed on May 10, 2020 and your most recent periodic financial disclosure report filed on May 8, 2020. You included transactions that were made outside of the required reporting period (the earlier of 30 days after learning of the transaction, but not more than 45 days after the transaction taking place.)

As you know, there is an automatic \$200 late fee that is imposed for each late transaction reporting period.

May 8, 2020 Periodic transaction report - the following transactions were reported on your beyond the grace period:

These transactions should have been reported no later than March 31, 2020, so there is a \$200 late fee for these transactions. On your annual report, you did not have corresponding periodic transaction reports on file for the following transactions:



These were not reported until you filed your report on May 10, so these are also late transactions over four reporting periods, so there is an \$800 late fee for these missed transactions, bringing the total late fees to \$1,000.

If there were extraordinary circumstances that prevented you from timely reporting these transactions, you may request a waiver of the fees by writing to Justina Fugh at fugh.justina@epa.gov with an explanation of the circumstances no later than June 5. Otherwise, we will advise you how to remit the payment payable to the U.S. Treasury when we return to the office.

Sincerely, Ferne

Ferne L. Mosley, Attorney-Advisor

Ethics Office – Office of General Counsel
U.S. Environmental Protection Agency
William Jefferson Clinton Building – North, Room 4413A
Washington, DC 20460 (for ground deliveries: 20004)
Mail Code 2311A
Desk phone: (202) 564-8046
Cell phone: (202) 306-2998

From: [Fugh, Justina](#)
To: [Briskin, Jeanne](#)
Subject: RE: Tiny bit of work to do on your 278
Date: Monday, June 14, 2021 10:40:00 AM

Hi Jeanne,

Well, you may upload the 278T with transactions in 2020 + 2021 because it will still be available for you to upload again next year. But if you do, then be sure to delete all of the 2021 transactions from your annual report that's currently pending. It may just be easier to type in the two 12/31/20 entries into Part 7 separately.

Justina

From: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Sent: Monday, June 14, 2021 8:50 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Tiny bit of work to do on your 278

Hi Justina,

Thanks for this feedback. I will make the corrections and updates. Should I upload the entire 278T that crossed the calendar year, or enter the two items from 12/31/20 by hand? (If I upload it to the 2020 report, will it still be available to upload again for the 2021 report?)


One day I will get this completely right the first time!

Jeanne

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Sunday, June 13, 2021 11:01 PM
To: Briskin, Jeanne <Briskin.Jeanne@epa.gov>
Subject: Tiny bit of work to do on your 278

Hi Jeanne,

I finally got around to reviewing your annual report this evening, and I noticed that you forgot to upload one of your 278Ts into the transaction section and also forgot to add two transactions from 12/31/20. Here are the pdfs of the 278Ts for you to add to Part 7 of your report that I've returned to you. Also, you need to add (b) (6)



Thanks,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772